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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,159	09/23/2003	Fernando R. Moncho	12158/5	2830
757	7590	06/21/2004	EXAMINER	
BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			HORTON, YVONNE MICHELE	
			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 06/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/670,159

Applicant(s)

MONCHO ET AL.

Examiner

Yvonne M. Horton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 23 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12/24/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not clear how the freestanding panel can be freestanding but yet still transfer a "substantial" amount of vibration to the supports. If the freestanding panel can transmit vibration, is the panel truly "freestanding"? Clarification is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 28 is rejected under 35 U.S.C. 102(b) as being anticipated by Des#252,215 to LEUTHESSER. LEUTHESSER discloses the method of providing a shelter including the steps of providing a plurality of upstanding supports (US); providing a roof (R) secured to a foundation (F); providing at least one wall (W); and providing at least one freestanding wall structure (FP) such that there is a space (SP) between the freestanding wall (FP) and the structure, see the marked attachment.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 3-7,10-16,18-27 and 29-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Des#252,215 to LEUTHESSER in view of Us Patent #5,107,637 to ROBBINS. In reference to claims 3,15,16,27,32,34 and 38, LEUTHESSER discloses a

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shelter (S) including a roof (R), supported by a plurality of wall structures (W) anchored securely in a foundation (F) and a freestanding, unattached and structurally separate panel (FP), see the marked attachment. LEUTHESSER discloses the basic claimed shelter except for explicitly disclosing whether the panel displays advertising material. ROBBINS teaches that it is known in the art to provide the panel of a shelter (10) with a panel (18) that displays advertising material, column 2, lines 66-69. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the shelter of LEUTHESSER with advertising, as taught by ROBBINS, in order to promote businesses and materials in the industry while also providing a person seeking shelter therein with a form of entertainment of reading. Being able to read an advertisement while waiting for the bus, if the shelter is used at a bus stop, would appear to lessen your wait time because your mind will be preoccupied. Also, advertisements will give businesses another way letting the public know what services they may have to offer. Regarding claims 6,22,31,37 and 39, LEUTHESSER does not disclose the use of solar roof panels. ROBBINS, however, teaches that it is known in the art to form the roof of a shelter with solar panels (14a-d) having circuitry (40) and power (46). Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the roof of LEUTHESSER with the solar panels of ROBBINS in order to provide the shelter with a high level of visibility during day and evening hours without the expense of placing and maintaining electrical wiring thereto. Digging the ground and laying underground cabling in order to provide a structure with electricity or lighting can be very expensive. Solar panels are another yet less

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expensive way of providing a structure with lighting. Solar panels are less expensive overall due to the fact that there is less manpower required in assembling whereas underground cabling required construction workers to dig the ground, electricians to lay and install the cables, maintenance person to keep up the cabling. In reference to claims 4,20,30,36 and 40, ROBBINS also teaches the use of a powered light source (32a-c). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the structure of LEUTHESSER with the powered light source of ROBBINS, in order to further light the interior of the shelter. Further regarding claim 3 and in regards to claim 41, the walls (W) of include a plurality of vertical upstanding panels (W) and a plurality of upstanding supports (US) that inherently provides at least partial protection from the wind. In reference to claim 5 and 21, LEUTHESSER does not disclose the use of a display panel defining spaced apart panels. ROBBINS teaches that it is known in the art to provide a display panel (18) with an interior space (IS) defined by a pair of spaced panels (18,28) wherein the light source (32a-c) is disposed therebetween. As mentioned earlier, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the shelter of LEUTHESSER with advertising, as taught by ROBBINS, in order to promote businesses and materials in the industry while also providing a person seeking shelter therein with a form of entertainment of reading. Regarding claims 7 and 24, the shelter (S) of LEUTHESSER discloses the use of horizontal support members (HS) extending between the support posts (US). In reference to claims 10,11,25,26 and 35, the panel (FP) of LEUTHESSER is perpendicular to the walls (W) and is disposed

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beneath the roof (R). Regarding claims 12, LEUTHESSER does not detail the material of his panel. However, ROBBINS teaches that it is known in the art to form the display panel (18) from a translucent material (column 3, lines 63-65). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the display panel of LEUTHESSER with the translucent panels of ROBBINS in order to provide the assembly with more light thereby making the advertisement easier to see and read. In reference to claims 13 and 18, the shelter of LEUTHESSER does not include a wall parallel to the "display" panel. However, ROBBINS also teaches forming a shelter (10) having a display panel (18) and a panel (22) disposed parallel thereto. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the assembly of LEUTHESSER, as modified by ROBBINS, with the panel parallel to the display panel, in order to further protect the user from the external environment. The structure of LEUTHESSER is open totally on one side thereof to external influences such as rain, snow, high winds, etc. Providing a panel parallel to the display panel would close of the structure a bit more and would further protect the user from rain, snow or high winds. Regarding claim 14, LEUTHESSER does not teach the use of a bench. ROBBINS teaches that it is known in the art to provide a shelter with a bench (24). Thus, it would have been obvious to one having ordinary skill in the art to provide the shelter of LEUTHESSER with the bench of ROBBINS in order to allow the user a place to sit while waiting for a bus (is used as bus shelter), and to relax and enjoy reading the advertisement. Further referencing claims 15 and 27, the advertisements are located within the panel (column

4, lines 5-15). In further regards to claim 16, the freestanding panel (FP) of LEUTHESSER includes an edge (PE) extending parallel to a first roof edge, see also the marked attachment. In reference to claims 17 and 29 although silent in LEUTHESSER, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the freestanding display walls of LEUTHESSER as modified by ROBBINS, inherently transfer a substantial amount of vibration. Regarding claim 19, the walls (W) of LEUTHESSER are disposed between at least two supports (US). In reference to claim 23, ROBBINS is silent with regards to his solar power storage. Hence, it would have been an been obvious to one having ordinary skill in the art at the time the invention was made to link the power and circuitry of ROBBINS underground in order keep them safely away from the users. Regarding claim 33, the method further includes providing solar powered (illumination means (14a-d) (32a-c) and (40,46).

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Des#252,215 to LETHESSER in view of US Patent#5,107,637 to ROBBINS as applied to claim 1 above, and further in view of US Patent #4,018,016 to ZALE. LEUTHESSER as modified by ROBBINS discloses the basic claimed shelter except for explicitly detailing that his upstanding supports are channel members. ZALE teaches that it is known in the art to form the upstanding supports of a shelter out of channel members (11,16,17). Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the upstanding and horizontal members of LEUTHESSER, as modified by ROBINS, out of the channel members of ZALE in order

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to ensure a rigid and much more sturdy shelter. Regarding claim 9, ZALE also teaches forming his panels from glass.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (703) 308-1909. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703) 308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

YMH

June 11, 2004